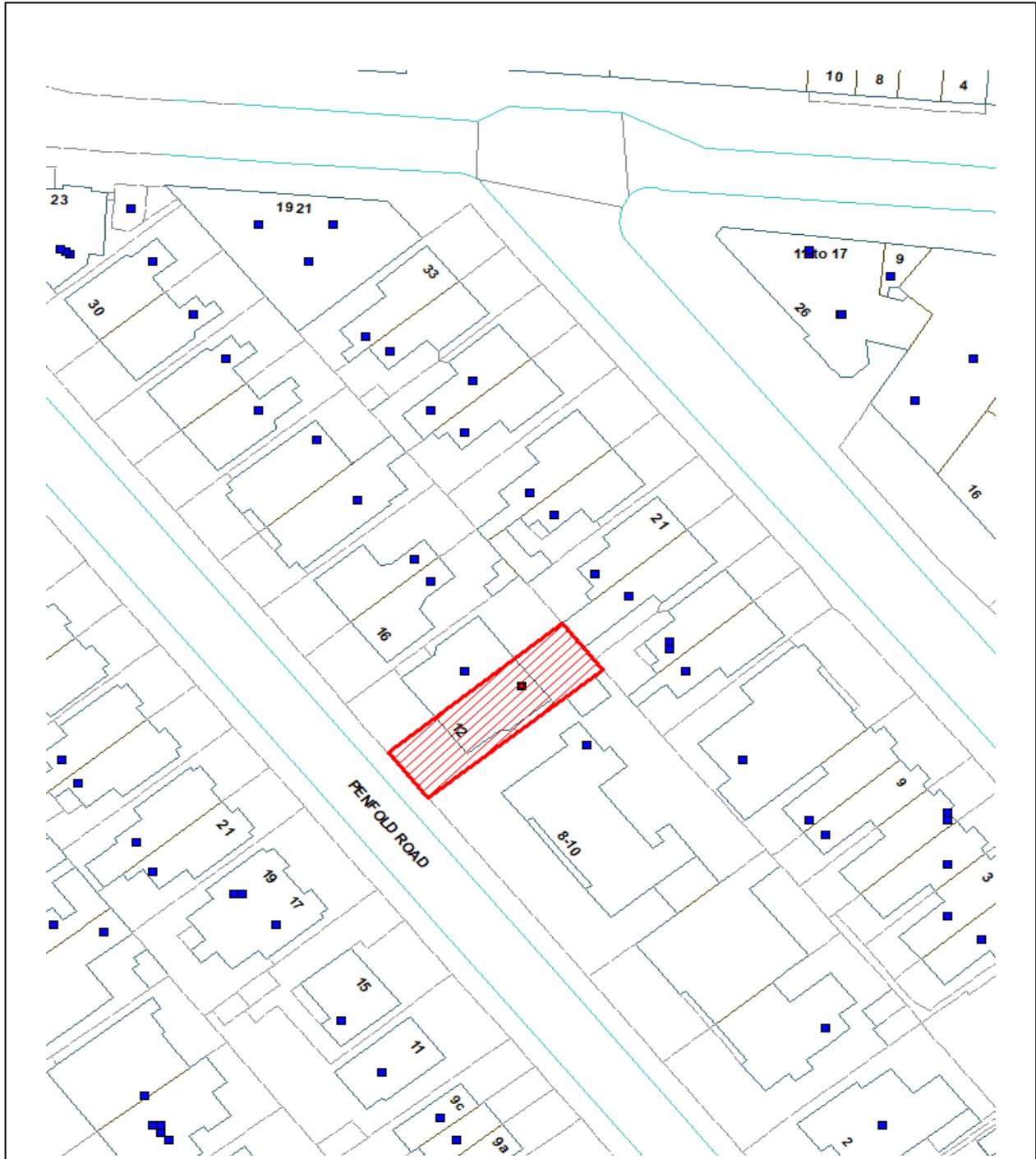


PLANNING COMMITTEE

11TH AUGUST 2020

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

A.5 PLANNING APPLICATION – 20/00520/FUL – 12 PENFOLD ROAD CLACTON ON SEA CO15 1JN



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Application: 20/00520/FUL

Town / Parish: Clacton Non Parished

Applicant: Mr Jonathan Smith - CF Support Services Limited

Address: 12 Penfold Road Clacton On Sea CO15 1JN

Development: Proposed change of use from dwelling (C3) to children's home (C2) for 2 children.

1. **Executive Summary**

- 1.1 The application is put before the Planning Committee as its approval would result in a proposed development which would conflict with the requirements of the Development Plan, principally Policy COM5 (Residential Institutional Uses) of the Tendring District Local Plan 2007.
- 1.2 The site falls within a '*Control of Residential Institutional Uses Area in Clacton and Frinton*', as defined on the adopted Local Plan Proposal Map. Within such areas the provision of new Residential Institutions are not generally supported in recognition that concentrating such accommodation in small areas can lead to various problems, including the cumulative effect such developments can have on the 'image' and tourism function of the resort concerned. Furthermore, such uses can cause harm in terms of pressure on local medical and support services, the loss of visitor accommodation and an erosion of local character through the conversion of front gardens to forecourt parking.
- 1.3 Notwithstanding, the policy position prescribed in Policy COM5 of the adopted Local Plan, Policy LP10 (Care, Independent Assisted Living) of the emerging Local Plan sets out a more positive planning policy position in terms of providing support for care homes and extra care housing within settlement development boundaries. The emerging Plan does not seek to replicate the previous areas of control for Residential Institutional Uses.
- 1.4 The application proposes changing the existing four-bedroom domestic dwellinghouse (which has a Use defined as C3) to a property which uses two of the available bedrooms to accommodate children between the ages of 7 and 15 who are under the care of Essex County Council ('Looked After Children').
- 1.5 Officers consider that by reason of the small-scale nature of this proposal, being to accommodate only two children, in a four bedroom dwellinghouse, that it would not materially conflict with the overall aims of policies which govern the provision of residential uses. Further, the development would result in offering two place within the District – which currently has a very high proportion of children who are placed outside the District due to the limited places available. Placing children outside areas they are familiar can contribute to the breakdown of placements, a lack of continuity of support and a lack of educational provision. On balance, given the particular circumstances and small-scale nature of the proposals, it is considered that this application can be supported.

Recommendation: Full Approval

That the Head of Planning be authorised to grant planning permission for the development subject to the conditions stated in section 8.2.

2. **Planning Policy**

2.1 The following Local and National Planning Policies are relevant to this planning application.

National Planning Policy Framework February 2019
National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy
QL6 Urban Regeneration Area
QL9 Design of New Development
QL10 Designing New Development to Meet Functional Needs
QL11 Environmental Impacts and Compatibility of Uses
COM5 Residential Institutional Uses
TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

SP1 Presumption in Favour of Sustainable Development
SPL1 Managing Growth
SPL2 Settlement Development Boundaries
SPL3 Sustainable Design
LP10 Care, Independent Assisted Living
PP14 Priority Areas for Regeneration

Local Planning Guidance

Essex Design Guide
Essex County Council Car Parking Standards - Design and Good Practice

Status of the Local Plan

- 2.2 The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.
- 2.3 Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018, with further hearing sessions in January 2020. The Inspector issued his findings in respect of the legal compliance and soundness of the Section 1 Plan in May 2020. He confirmed that the plan was legally compliant and that the housing and employment targets for each of the North Essex Authorities, including Tendring, were sound. However, he has recommended that for the plan to proceed to adoption, modifications will be required – including the removal of two of the three Garden Communities 'Garden Communities' proposed along the A120 (to the West of Braintree and on the Colchester/Braintree Border) that were designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033.
- 2.4 The three North Essex Authorities are currently considering the Inspector's advice and the implications of such modifications with a view to agreeing a way forward for the Local Plan.

With the Local Plan requiring modifications which, in due course, will be the subject of consultation on their own right, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications – increasing with each stage of the plan-making process.

- 2.5 The examination of Section 2 of the Local Plan (which contains more specific policies and proposals for Tendring) will progress once modifications to the Section 1 have been consulted upon and agreed by the Inspector. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

3. **Relevant Planning History**

20/00520/FUL	Proposed change of use from dwelling (C3) to children's home (C2) for 2 children.	Current
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4. **Consultations**

ECC Highways	The consultation response and any suggested conditions will be reported by way of Late Observations.
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5. **Representations**

- 5.1 No comments were received in response to the publicity of the application which included writing directly to the occupiers of nine properties within the vicinity of the site or from the site notice which was displayed on 3rd June 2020.
- 5.2 A letter of support has been received from Essex County Council Children and Young People Procurement Service which confirms that the applicant has been awarded a contract to provide Children's home placements within Essex. As part of this contract the expectation is for the contract holder to develop their service offer and increase the number of placements available. The County are aware that the applicant has secured a property for this use. To clarify, there remains an increased need for this service in Essex and Essex County Council intend to place more young people within the County. Once (subject to planning) the property is open, this will be another option that can be considered when referrals are received by the County. Furthermore, the County has confirmed that the applicant is a care provider for whom they have a long relationship and they want this to continue under the terms of the current residential framework.

6. **Assessment**

Site Context

- 6.1 No.12 Penfold Road is a five-bedroom Victorian semi-detached villa style property currently in residential use. It is arranged over two floors, with a large kitchen, lounge and dining room on the ground floor; five bedrooms on the first floor; with a family bathroom and ensuite shower room to the master bedroom.
- 6.2 The property is a short distance from the sea and all the amenities of Clacton town centre. Penfold Road contains a mix of properties including two other care establishments. Nos. 4-6 is an adult care home for the elderly and Nos. 7-12 (the immediate neighbour) is a registered care home for the rehabilitation of people with mental health conditions.

- 6.3 The site is in a central location close to schools, shops and amenities. It is also close to the beach and the pier.

Planning History

- 6.4 There is no relevant planning history for the application site.
- 6.5 Nos 8-10 Penfold Road were, from the early 1970's until the late 1980's, owned by the London Borough of Hackney as a Hotel specifically catering for those with C2 needs, no other residents were permitted to stay there unless recommended by the London Borough of Hackney. A lawful development certificate (10 year rule) was granted for this use in 1993.
- 6.6 Nos 4-6 Penfold Road appears to have been granted retrospectively as an Elderly Care facility in 1988.

Proposal

- 6.7 The proposal is for a change of use of the property to Class C2 use. This would allow the house to be used as a dual placement, short term and emergency care home for young people within the Essex area. The primary difference between a Class C3 (Residential Dwelling) and Class C2 (Residential Institution) is the element of care required for the occupiers.
- 6.8 The home will be OFSTED regulated and help fill a significant gap in care provision for young people within Essex. Nationally 41% of all Looked After Children [source: The Department of Education's report on Children looked after in England (including adoption), year ending 31 March 2019] are housed outside of the County (see paragraph 10.2 for the report). As a County, Essex - at 45% - have above the national average of Looked After Children placed outside the County. This figure is provided directly from the Category and Contract Manager (Children and Young People) at Essex County Council.
- 6.9 The building lends itself to a dual placement home. Two bedrooms on the first floor are ideally sized for a children's home, providing bright and comfortable accommodation. These would provide accommodation and support for two children aged between 7 and 15. The children would share the family bathroom. The remaining bedrooms would be used as an office and for staff accommodation.
- 6.10 Apart from renewing the windows and redecorating where required, the children's home use will not require any changes to the appearance of the property. It will continue to function and look exactly like any other single family dwelling. An express grant of planning permission is not required for renewing the windows and redecorating. No signage would be required.

Principle of Development

- 6.11 The site is located within the Development Boundary, therefore there is no principle objection to the proposal, subject to the detailed considerations discussed below.

Urban Regeneration

- 6.12 Urban regeneration is a top priority for the Council to improve quality of life, stimulate investment and local economic development.

- 6.13 In all cases development should be designed to build on local strengths. In these locations the focus will be on encouraging mixed-use developments, and enhancing vitality and viability, environmental quality, community safety, accessibility and links between the tourism and shopping cores.
- 6.14 Saved Policy QL6 states that, within these Urban Regeneration Areas permission will be granted for development that reinforces and/or enhances the function, character and appearance of the area and contributes towards regeneration and renewal. In particular, the Urban Regeneration Areas will be the focus for:- investment in social, economic and transportation infrastructure; and initiatives to improve vitality, environmental quality, social inclusion, economic prospects, education, health, community safety and accessibility.
- 6.15 The property would be managed by an OFSTED accredited Registered Manager (RM); the RM would be supported by two senior support workers, also existing employees of the business, and would recruit an additional seven full and part time workers to complete the 24/7 shift pattern.
- 6.16 There is an economic benefit of a home of this size to the surrounding area. Not only will the applicant look to recruit local staff (this will be a team of up to ten people), the proposal will also help generate local spending in terms of the staff and cared for children, shopping, eating and spending money in the local area. The children will be taken out every day and will use the extensive amenities in Clacton to entertain and reward the children as part of the applicant's care process.

Residential Institutional Uses

- 6.17 Residential institutional uses include care homes, nursing homes and other non-custodial institutions. Housing provision should be geared towards particular groups in the population who have special needs, including the elderly, people with disabilities and the homeless. The District Council support the provision of accommodation to meet special needs, but recognises that concentrating such accommodation in small areas can lead to various problems, including the cumulative effect such developments can have on the "image" and tourism function of the resorts concerned. Residential institutions have the potential to accommodate a significant number of residents, employ substantial numbers of staff and receive visits from friends and family. Therefore, they are best located in accessible locations, ideally within the settlement development boundaries of the District's more Sustainable Urban Settlements.
- 6.18 Saved Policy COM5 states that the development of new residential institutions and changes of use of existing properties to residential institutions will not be permitted within the '*Control of Residential Institutional Uses Areas in Clacton and Frinton*' as defined on the Proposals Map Insets. Around the seafront and town centre areas of Clacton and Frinton there have been a substantial number of changes of use of properties from residential or holiday use to residential institutions. This concentration of such uses puts pressure on local medical and support services. It has also led to a loss of visitor accommodation and an erosion of local character through the conversion of front gardens to forecourt parking. The District Council has therefore identified areas in Clacton and Frinton where such development has occurred and where the development of new residential institutions and the conversion of existing properties to such uses will be resisted in order to avoid a further increase in concentrations. The site is located in an area of Clacton which is covered by this control.
- 6.19 In the preamble to emerging Policy LP10 reference is made to the demographic projections suggesting that, by the end of the plan period in 2033 "*around 60% of our residents could be over the age of 65*" – the remainder of the preamble makes reference to "*future generations of older and disabled residents*". The Policy makes no specific reference to the need for considering younger children in the looked-after system, nor does the emerging

policy restrict or prevent the siting of residential institutions in Clacton or Frinton. As such, as the site is within the Settlement Boundary the only requirement of Policy LP10 is that all new care homes and extra care housing must offer a high quality, safe, secure and attractive environment for their residents and provide sufficient external space to accommodate the normal recreation and other needs of residents, visitors or employees.

- 6.20 It is considered that a unique set of circumstances co-exist for the Local Planning Authority to consider recommending approval for this application contrary to the requirements of the Development Plan.
- 6.21 Due to the limited availability of appropriate placements for 'Looked after Children' (LAC) within the district, a high level (circa 45%) of children are placed outside of the District.
- 6.22 OFSTED reported in April 2014 [source: From a distance Looked after children living away from their home area, April 2014, see paragraph 10.3 for the report) that evidence available to inspectors showed that the further away from home children live, the less likely it is that their health and education needs will be met. In nearly half of the 92 cases tracked, children and young people arrived in new areas without the right specialist support being in place for them, with poor information sharing leading to potentially damaging delays in their care. In a third of cases, the quality of the support and help offered by services out of area had not been properly considered.
- 6.23 The [then] National Director for Social Care observed in response to the report that becoming looked after is difficult enough for any young person, even more so when they move away from their family, friends, and familiar surroundings to an unfamiliar place, without proper access to the help and support they so desperately need. Given the serious risks sometimes associated with out of area placements, corporate parents must prioritise and understand the needs of this group – particularly as the numbers of looked after children living out of area are only set to rise. Some young people experienced serious deficiencies in their education, while others – nearly a third of tracked cases – had difficulty accessing health care, most commonly from Child and Adolescent Mental Health Services (CAMHS). These delays usually resulted of poor liaison between different local authorities and agencies, a lack of capacity, or disputes about funding.
- 6.24 The crux of the Control of Residential Institutions in the Clacton area focuses on the concentration of such uses putting pressure on local medical and support services. It has also led to a loss of visitor accommodation and an erosion of local character through the conversion of front gardens to forecourt parking. In response to this, and the particular circumstances of this application, it should be noted that:
- The proposal would result in two children being placed and, in comparison to the potential number of occupants of the existing family home being much greater, the pressures on local medical and support services are likely to be reduced;
 - It is acknowledged that there would be a loss of visitor accommodation; however the property is a four-bedroomed family home and unlikely therefore to be viable as visitor accommodation; and
 - The property already has off-street parking and the local character would therefore be no further affected than existing.
- 6.25 Overall, whilst a proposal for a change of use to a Residential Institution would normally be considered unacceptable for conflicting with Policy COM5, the small scale nature of this proposal does not conflict with the overall aims of providing a range of residential institutions in the District.

Highway Safety/Parking

- 6.26 Paragraph 108 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users.
- 6.27 Saved Policy QL10 of the adopted Tendring District Local Plan 2007 states that planning permission will only be granted if amongst other things; access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate and the design and layout of the development provides safe and convenient access for people. The sentiments of this policy are carried forward within draft Policy SPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.
- 6.28 The parking required for Use Class C2 as set out within the Essex County Council Parking Standards 2009 is 1 space per full time equivalent staff + 1 visitor space per 3 beds.
- 6.29 The Planning Statement suggests that, for the majority of the time, it is envisaged that the two children will be supported by three members of staff. There are four off-street spaces available and the proposed level of parking is considered satisfactory (in addition to the site being in a highly sustainable edge of town centre location).
- 6.30 The Planning Statement also claims that the applicant operates green travel plans as part of their sustainability policy, recruiting local staff wherever possible and encouraging the use of public transport and car sharing. They would also purchase season tickets for permanent staff who need to drive to work in the Agate Road car park, a short walk from the premises. The likelihood is therefore that parking and vehicle movements will reduce.

Impact on Residential Amenity

- 6.31 The NPPF, at paragraph 17 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Saved Plan states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 6.32 The proposal is for a change of use, as such with respect to privacy and daylight the proposal would have no greater impact on the occupiers of nearby properties than the existing use.
- 6.33 In terms of amenity; the existing rear garden has an area just less than 60sqm which falls a little short of the requirement for a minimum of 75 square metres for a two-bedroom property. Notwithstanding this; the matter of minimum levels of amenity space relate to new dwellings only. Policy COM5 simply requires there would be sufficient external space in the proposal to accommodate the normal recreation and other needs of residents, visitors or employees without impacting on highway safety, or the residential amenities enjoyed by adjoining properties. In regards to noise and disturbance, the Planning Statement confirms that, for the majority of the time, the applicant envisages that the two children will be supported by three members of staff. This means five people would be present at the property. This is the same as the number of occupants currently in residence at the property. It is very important that the children attend school and this may mean there are only two people in the property during the day. In regards to shift patterns, shift changeovers are designed to avoid any disturbance to neighbours. Staff work predominantly 24 hour shifts which changeover after breakfast between 8.00am and 9.00am. Where 12 hour shifts are scheduled these will always change over after tea in the evening. No staff movements will take place during the period 21:00- 08.00.

Recreational Disturbance

- 6.34 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'.
- 6.35 This residential development lies within the Zone of Influence. The site is not within or directly adjacent to one of the European designated sites, but is approximately 3.3 km away from the Essex Estuaries SAC (Special Area of Conservation).
- 6.36 In this instance, given that the number of residents proposed is not excessive and is directly comparable to the number of people who currently occupy the property, the Local Planning Authority consider it would be unreasonable to request a financial contribution toward recreational disturbance as the number of visitors to the protected sites is unlikely to increase as a result of the development.

7. Conclusion

- 7.1 The very small scale of the proposed use, being limited to two children only, whilst being located in an area where residential institutions are restricted, is unlikely to result in a use which causes harm to the character of the area. The development would facilitate a much-needed placement for two Looked after Children in the District. The proposed limitations on shift hand-over and small number of children is unlikely to impact upon neighbouring amenities and the parking provision is unlikely to have any adverse impact on highway safety.

8. Recommendation

- 8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives.

8.2 Conditions and Reasons

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

- 2 Notwithstanding the provisions of Article 3, Schedule 2 Part 3 of the Town and Country Planning (General Permitted Development) Order 1995, (or any Order revoking and re-enacting that Order with or without modification), the application site shall be used as a children's home and for no other purpose including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any Statutory instrument and re-enacting that Order with or without modification).

Reason - The development hereby permitted is contrary to the general adopted policy of the local planning authority and is granted solely in recognition of the particular small scale nature of the proposed use. Any wider use of this premises for a Class C2 use will need to be assessed against its impact on its own merits and with regard to the amenities and privacy of occupiers of adjoining properties.

8.3 Informatives

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

9. Additional Considerations

Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
 - 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
 - 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

Human Rights

- 9.8 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.
- 9.9 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 9.10 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation

to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Finance Implications

- 9.11 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.
- 9.12 The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings built, paid by Central Government over six consecutive years. In this instance, it is not considered to have any significant weight attached to it that would outweigh the other considerations.

10. Background Papers

- 10.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.
- 10.2 The Department of Education's report on Children looked after in England (including adoption), year ending 31 March 2019:-
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850306/Children_looked_after_in_England_2019_Text.pdf
- 10.3 OFSTED report April 2014:- From a distance Looked after children living away from their home area:-
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/419070/From_a_distance_Looked_after_children_living_away_from_their_home_area.pdf